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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re FRANKIE P., a Person Coming
Under the Juvenile Court Law.

B293154

(Los Angeles County
Super. Ct. No. 17CCJP00853A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

MATTHEW P., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of
Los Angeles County. Nichelle L. Blackwell, Juvenile Court
Referee. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for
Defendant and Appellant Matthew P.

Valerie N. Lankford, under appointment by the Court of
Appeal, for Defendant and Appellant Evelyn C.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and David Michael Miller, Deputy County Counsel for Plaintiff and Respondent.

Matthew P. (father) and Evelyn C. (mother) appeal from an order terminating their parental rights to Frankie P. (born Oct. 2017). The parents' sole argument on appeal is that the court and the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with the requirements of the Indian Child Welfare Act (ICWA). We find that the juvenile court's determination that ICWA was not applicable is supported by substantial evidence. We affirm.

COMBINED FACUTAL AND PROCEDURAL HISTORY

The family consists of mother, father, Frankie's half-sibling M.G. (born Mar. 2016),¹ and Frankie. On June 24, 2016, the juvenile court sustained a petition regarding M.G. under section 300, subdivisions (a) and (b)(1).

DCFS received a referral regarding Frankie after he tested positive for methamphetamine at his birth. On October 2, 2017, DCFS interviewed the parents. Mother denied any Indian ancestry.² Father initially stated his belief that he had Sioux Indian ancestry on the paternal grandmother's side of his family. Father had no further information.

On October 4, 2017, a petition was filed on behalf of Frankie pursuant to section 300, subdivisions (b) and (j). The petition alleged that Frankie was at risk of serious harm due to the parents' drug abuse and abuse of his sibling, who was a

¹ Father is not M.G.'s father. M.G. is not a subject of this appeal.

² The juvenile court previously determined that ICWA did not apply as to M.G.

current dependent of the court due in part to mother's drug abuse.

The initial detention hearing took place on October 5, 2017. Mother and father appeared. Father was appointed counsel and found to be the presumed father of Frankie. Mother's previously appointed counsel from the dependency matter involving M.G. continued to represent her.

Mother filed an ICWA-020 Parental Notification of Indian Status form in which she denied any Indian ancestry. Father also filed an ICWA-020 Parental Notification of Indian Status form in which he declared no Indian ancestry and signed the form under penalty of perjury. The juvenile court inquired further as to father's Indian status, showing father the ICWA-020 form and stating, "This is called a 'Parental Notification of Indian Status.' And this document indicates you checked the box down here stating that you do not have any Indian ancestry; is that correct?" Father replied, "Yes, Your Honor."

The juvenile court stated, "So based on the father's representations today, I will find today that this child is not an Indian child. The court has no reason to know that [Frankie] is an Indian child. And therefore, the [ICWA] does not apply." The court then detained Frankie from parental custody and ordered monitored visitation.

On November 16, 2017, the court conducted a combined jurisdictional/dispositional hearing regarding Frankie. Neither parent was present. In addition, neither parent had visited Frankie or kept in contact with DCFS. The parents were enrolled in no programs, and they failed to submit to drug testing. The juvenile court sustained the petition.

Frankie was declared a dependent of the juvenile court and removed from parental care. The parents were ordered to participate in programs to address their substance abuse issues.

They were allowed monitored visits with Frankie, who resided in a foster home with M.G.

The parents failed to appear at the six-month review hearing on June 12, 2018. The juvenile court found the parents' progress in completing their programs to be "nonexistent." The court terminated reunification services and set the matter for a section 366.26 permanency planning hearing. DCFS reported that the foster parents were interested in adopting both children.

Father filed a section 388 petition on the date of the contested section 366.26 hearing.³ Father requested reinstatement of reunification services because he had entered an inpatient substance abuse program on August 2, 2018, which offered individual counseling and parenting classes. After a contested hearing, father's petition was denied.

The court also conducted a contested section 366.26 hearing. The juvenile court found by clear and convincing evidence that Frankie was likely to be adopted, and that the parents did not meet their burden of showing any exception to termination of parental rights. The parents' parental rights were terminated.

On October 9, 2018, mother and father filed notices of appeal.

DISCUSSION

I. Applicable law and standard of review

ICWA was enacted "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture' [Citations.]" (*In re Levi U.*

³ Section 388 allows a parent to petition the court to change, modify, or set aside a previous court order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).)

(2000) 78 Cal.App.4th 191, 195; *Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 37.)

When a court “‘knows or has reason to know that an Indian child is involved’ in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child’s tribe notice of the pending proceedings and its right to intervene. [Citations.] Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given. [Citations.]” (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538.)

To make a finding that ICWA applies in a proceeding, the court must “‘know or have reason to know” that an Indian child is involved. (*In re Shane G., supra*, 166 Cal.App.4th at pp. 1538-1539.) Thus, the court and DCFS have an “affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . may be or has been filed, is or may be an Indian child.” (§ 222.3, subd. (a).)

A court knows or has reason to know that an Indian child is involved if: “(A) A person having an interest in the child . . . informs the court or the county welfare agency . . . or provides information suggesting that the child is an Indian child; [¶] (B) The residence of the child, the child’s parents, or an Indian custodian is in a predominantly Indian community; or [¶] (C) The child or the child’s family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government.” (*In re Shane G., supra*, 166 Cal.App.4th at pp. 1538-1539.) If these or other circumstances exist, further inquiry is necessary. “If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice” to the tribe. (*Ibid.*)

A juvenile court’s determination that ICWA does not apply is reviewed for substantial evidence. (*In re E.W.* (2009) 170

Cal.App.4th 396, 404.) Under this standard, we uphold the juvenile court's findings if any substantial evidence, contradicted or uncontradicted, supports them. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences in favor of affirmance. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

"A notice violation under ICWA is subject to harmless error analysis. [Citation.] 'An appellant seeking reversal for lack of proper ICWA notice must show a reasonable probability that he or she would have obtained a more favorable result in the absence of the error.' [Citation.]" (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715.)

II. Substantial evidence supports the juvenile court's determination that ICWA was inapplicable

The parents' sole claim on appeal is that the trial court erred in determining that ICWA was inapplicable. When interviewed by a DCFS social worker on October 2, 2017, father stated his belief that he may have Sioux Indian heritage on the paternal grandmother's side of his family. Subsequently, after the commencement of the dependency proceedings, father signed a declaration under penalty of perjury stating that he did not have any Indian heritage. He confirmed his lack of Indian ancestry orally under questioning from the court. It was the juvenile court's obligation to evaluate this evidence and reach a conclusion as to the applicability of ICWA.

Father's declaration, signed under penalty of perjury, and his oral answers under the court's questioning constitute substantial evidence supporting the juvenile court's decision that ICWA did not apply. Father's definitive answers both in writing and orally, in court, overrode his previous speculation of Indian heritage on his mother's side. It is reasonable to infer that between the time of his initial interview and his court

appearance, father made inquiries and came to understand that his previous belief was incorrect, and that in fact, he had no Indian heritage. No other representations that Frankie might be considered an Indian child were made. Father's single, uncertain statement of possible Indian heritage, which he later formally revoked, was insufficient to trigger the ICWA notice requirements. (See, e.g., *In re O.K.* (2003) 106 Cal.App.4th 152, 157 [information provided by grandmother that the child may have Indian heritage was "insufficient to give the court reason to believe that the minors might be Indian children"].)

Father's declaration, filed under penalty of perjury, and his subsequent answers to the court's questions, were unequivocal. The juvenile court had no reason to believe that father had Indian heritage. Nor did it have any reason to believe that mother had Indian heritage. Thus, the juvenile court's decision was supported by substantial evidence.

III. The cases cited by the parents are distinguishable

The parents cite *In re Marinna J.* (2001) 90 Cal.App.4th 731, 737 (*Marinna J.*) for the proposition that the duty to send ICWA notice is triggered when a party proffers the name of a tribe. In *Marinna J.*, at the outset of the proceedings, the Yolo County Department of Social Services (DSS) obtained information that there was Indian heritage in the families of both parents. (*Id.* at p. 736.) The father specifically noted that he was of Cherokee Indian ancestry. Despite being aware of the issue, DSS failed to notify any tribes or the Bureau of Indian Affairs. (*Ibid.*) *Marinna J.* thus does not address the situation where, as here, a parent provides speculative information as to possible Indian heritage, then unequivocally revokes that information.

The parents further argue that a parent's Indian status need not be certain in order to trigger the notice provisions of the ICWA. (Citing *In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.)

However, in *Desiree F.*, the dependency petition filed on behalf of the child noted that ICWA possibly applied. (*Ibid.*) Here, no such evidence existed. The only evidence of possible Indian heritage was unequivocally revoked.

Further, the parents argue that when conflicting information about Indian ancestry is obtained, DCFS must further investigate and resolve the discrepancy. Here, the parents argue, father's initial statement triggered the need for an inquiry. In support of this argument, the parents cite *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1167-1168 (*Gabriel G.*). Like the other cases cited by the parents, *Gabriel G.* is distinguishable. There, the father's unsigned Parental Notification of Indian Status (ICWA-020) form indicated that the paternal grandfather "is or was a member" of the Cherokee tribe. (*Id.* at p. 1163.) However, a social worker later reported that the father had been interviewed in custody and father had stated that he had no Indian heritage. (*Id.* at p. 1164.) The court did not follow up or question father regarding his Indian heritage when he later appeared in court. (*Ibid.*) At the subsequent section 366.26 hearing, the court found that ICWA did not apply and terminated parental rights. (*Ibid.*) The appellate court reversed for two reasons. First, although the child's birth certificate designated the father as the child's biological father, the juvenile court referred to him as an "alleged" father throughout, and proceeded under the impression that it need not consider father's ICWA status. (*Id.* at p. 1166.) Further, father's initial ICWA-020 form triggered the notice provisions. (*Id.* at p. 1167.)

The *Gabriel G.* court placed significant emphasis on the obligation to file truthful documents in court, stating: "As an officer of the court, father's attorney had a duty not to present any false information to the court, and she could not have

possibly obtained such specific Indian heritage information without father's input." (*Gabriel G.*, *supra*, 206 Cal.App.4th at p. 1167.) In contrast, the later statement, relayed by a social worker, was far more vague: "the social worker's representation . . . did not provide any specifics regarding the inquiry he made of father." (*Ibid.*) Under these circumstances, the ICWA-020 was the authoritative evidence.

Here, too, the ICWA-020 provides the authoritative evidence. It was signed under penalty of perjury. Father confirmed on the record in court that he signed it, and that its contents were accurate. Under the circumstances, father's prior, uncertain comment did not trigger the notice requirements of ICWA.

IV. Any error was harmless

Father has not asserted, either during the pendency of the proceedings below or on appeal, that he had Indian ancestry. Nor did mother. Thus, there is no reason to believe that Frankie is an Indian child.

An ICWA notice deficiency "must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error. [Citations.]" (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.) As the appellants, father and mother have the burden of showing prejudicial error. (Cal. Const., art. VI, § 13; *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) As noted in *Rebecca R.*:

"Father is here, now, before this court. There is nothing whatever which prevented him, in his briefing or otherwise, from removing any doubt or speculation. He should have made an offer of proof or other affirmative representation that, had he been asked, he would have been able to proffer some

Indian connection sufficient to invoke the ICWA. He did not.”

(*Rebecca R., supra*, 143 Cal.App.4th at p. 1431.)

In the absence of an affirmative representation that father has Indian ancestry, “the matter amounts to nothing more than trifling with the courts. [Citation.]” (*Rebecca R., supra*, 143 Cal.App.4th at p. 1431.)

The parents’ appeal fails because substantial evidence supported the juvenile court’s determination that ICWA was inapplicable. Further, the parents have failed to show that any possible error was prejudicial.

DISPOSITION

The order is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT